

1 not presented in the prior petition, it may be considered only in the circumstances provided by §
2 2244(b)(2). Under 28 U.S.C. § 2244(b)(3)(A), before a second or successive petition is filed in the
3 district court, the applicant must move in the court of appeals for an order authorizing the district court
4 to consider the petition. Here, petitioner has not attached a copy of an order form the Ninth Circuit
5 Court of Appeals authorizing the filing of a second or successive petition. Accordingly, the instant
6 petition will be dismissed without prejudice as a successive petition.¹

7 In order to proceed with an appeal, petitioner must receive a certificate of appealability. 28
8 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-51 (9th
9 Cir. 2006); *see also United States v. Mikels*, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a
10 petitioner must make “a substantial showing of the denial of a constitutional right” to warrant a
11 certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84
12 (2000). “The petitioner must demonstrate that reasonable jurists would find the district court’s
13 assessment of the constitutional claims debatable or wrong.” *Id.* (quoting *Slack*, 529 U.S. at 484). In
14 order to meet this threshold inquiry, the petitioner has the burden of demonstrating that the issues are
15 debatable among jurists of reason; that a court could resolve the issues differently; or that the questions
16 are adequate to deserve encouragement to proceed further. *Id.* This court has considered the issues
17 raised by petitioner, with respect to whether they satisfy the standard for issuance of a certificate of
18 appealability, and determines that none meet that standard. The court will therefore deny petitioner a
19 certificate of appealability.

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26 ¹ Because the court finds that the petition is successive, it declines to reach the other arguments presented by respondents.

1 **IT IS THEREFORE ORDERED** that respondents' motion to dismiss (ECF No. 12) is
2 **GRANTED**. The petition (ECF No. 6) is **DISMISSED** without prejudice as a successive petition.

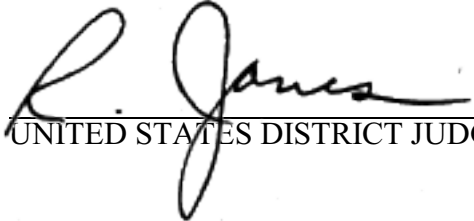
3 **IT IS FURTHER ORDERED** that petitioner's motion for voluntary dismissal (ECF No. 20)
4 is **DENIED as moot**.

5 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

6 **IT IS FURTHER ORDERED** that all pending motions are **DENIED as moot**.

7 **IT IS FURTHER ORDERED** that the clerk **SHALL ENTER JUDGMENT**
8 **ACCORDINGLY**.

9 DATED this 14th day of March, 2012.

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13 UNITED STATES DISTRICT JUDGE
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